



*Hadass Kogan  
Corporate Counsel  
Hadass.kogan@dish.com  
(202) 463-3711*

July 2, 2019

## **EX PARTE PRESENTATION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re:   *Electronic Delivery of MVPD Communications, MB Docket No. 17-317;  
Modernization of Media Regulation Initiative, MB Docket No. 17-105***

Dear Ms. Dortch:

On Friday, June 28, 2019, Stacy Fuller of AT&T Services, Inc., on behalf of DIRECTV LLC (collectively, AT&T), and the undersigned of DISH Network L.L.C. (DISH) met with Michael Scurato, Acting Legal Advisor for Media and Consumer Protection for Commissioner Starks, to discuss the Commission's draft order adopting, with modifications, NAB and NCTA's joint proposal to permit broadcasters to email carriage election notices to cable operators.<sup>1</sup> AT&T and DISH reiterated that they do not oppose the Commission adopting the NAB/NCTA joint proposal for cable operators but we continue to have significant concerns with the Commission's proposal to extend this email regime to DISH and DIRECTV, the nation's two direct broadcast satellite (DBS) providers.

We explained that there is no record basis for extending the cable/broadcaster joint proposal to DBS providers. The Commission-identified burdens associated with the current carriage election regime relate solely to commercial broadcasters mailing carriage election notices to thousands of cable systems in order to elect retransmission consent.<sup>2</sup> As the Commission notes, the carriage election default is different for DBS providers such that commercial broadcasters do not mail DBS providers carriage election notices if they desire retransmission consent.<sup>3</sup> Broadcasters have successfully managed the different defaults between cable operators and DBS providers for many years. Thus, extending the NAB/NCTA proposal to DBS providers in order to address any purported confusion among broadcasters is without merit.

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<sup>1</sup> See *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, MB Docket Nos. 17-317, 17-105, Draft Report and Order and Further Notice of Proposed Rulemaking, FCC-CIRC1907-07 (June 19, 2019) (*Draft Order*).

<sup>2</sup> See *id.* at ¶ 4 (citing NAB's "more than \$1,000 per station" cost estimate).

<sup>3</sup> *Id.* at ¶ 2.

If the Commission nonetheless decides to impose the cable/broadcaster regime on DBS providers, which we believe it should not, AT&T and DISH recommend that the Commission modify the *Draft Order* to require the Commission to publish a list of all broadcaster carriage election notices that it received via its [ElectionNotices@fcc.gov](mailto:ElectionNotices@fcc.gov) email inbox by October 1, 2020, the next carriage election deadline, and triennially thereafter. Pursuant to the process set forth in the *Draft Order*, the Commission and MVPDs will only receive email notices from broadcasters requesting a change to their current carriage elections. In the event that a broadcaster does not receive verification that its email notice was received by an MVPD and is unable to reach the MVPD by phone, the *Draft Order* stipulates that the Commission will consider the election timely made if it was properly copied to the Commission's election notice mailbox and placed in the broadcaster's public file on time.<sup>4</sup> This may leave MVPDs in a position where elections have been validly made by a broadcaster but not actually received by an MVPD. The *Draft Order* provides that the Commission will make available copies of such emails in the event of a dispute regarding whether an election was validly made.<sup>5</sup> However, all MVPDs will benefit from the Commission publishing this list shortly after October 1 to ensure that MVPDs are aware of all elections the Commission considers valid, rather than waiting for broadcasters and MVPDs to approach it with a carriage dispute.

As we have stated throughout this proceeding, we have significant concerns with relying on email delivery of carriage election notices.<sup>6</sup> Allowing MVPDs to cross-check the change notices received by the Commission shortly after the October 1, 2020 deadline will expedite the resolution of any disputes. In the event AT&T and/or DISH will have to launch a new station, they will require as much time as possible between October 1, 2020 and January 1, 2021 to accomplish the necessary satellite work.<sup>7</sup> Having the Commission publish all of the broadcaster change notices shortly after October 1, 2020 will ensure that MVPDs receive timely notice of such changes. Among other things, the Commission's public notice should identify the broadcast station, the specific MVPD, and provide a link to the broadcaster's emailed change notice, which contains all the required information.

Finally, the DBS representatives noted that if the Commission is going to impose the cable/broadcaster electronic carriage election notice regime on DBS providers, we are supportive

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<sup>4</sup> *Id.* at ¶ 14.

<sup>5</sup> *Id.* at ¶ 25.

<sup>6</sup> *See, e.g.*, Letter from Jeanine Poltronieri, AT&T, to Marlene Dortch, FCC, MB Docket Nos. 17-105, 17-317, at 2 (filed April 3, 2019) (citing concerns with corporate spam filters, typos in the delivery addresses). Moreover, the proposed fall-back telephone number provides little assurance that MVPDs will be able to confirm receipt of the emailed notice. *Draft Order* at ¶ 11.

<sup>7</sup> *See, e.g.*, *Draft Order* at ¶ 16 (quoting *SHVIA Order*, “[DBS] carriers need some measure of control in configuring their satellite systems to meet their statutory obligations”).

of the Commission seeking comment on whether MVPDs may send required notices to broadcasters via email.<sup>8</sup>

/s/ Hadass Kogan

Hadass Kogan

cc: Michael Scurato

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<sup>8</sup> See *Electronic Delivery of Notices to Broadcast Television Stations, Modernization of Media Regulation Initiative*, MB Docket Nos. 19-165, 17-105, Draft Notice of Proposed Rulemaking, FCC-CIRC1907-08 (June 19, 2019).